

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2008-050966

12/09/2010

HONORABLE MICHAEL R. MCVEY

CLERK OF THE COURT  
R. Tomlinson  
Deputy

HELVETICA SERVICING INC, et al.

DONNELLY A DYBUS

v.

KELLY R PASQUAN, et al.

KELLY R PASQUAN  
10601 N MONTROSE WAY  
SCOTTSDALE AZ 85254

VISHNU R JONNALAGADDA  
DANIEL L KLOBERDANZ  
THOMAS PURCELL LIDDY

MINUTE ENTRY

The Court has considered the Third Party Defendant Joseph Giraudo's Notice of Lodging Form of Judgment, Plaintiff Helvetica's "Emergency" Motion to Strike and Motion for Rule 11 Sanctions;<sup>1</sup> Third Party Defendant Interpleader Joseph Giraudo's Response to Helvetica's Emergency Motion to Strike and Motion for Rule 11 Sanctions; Plaintiff Helvetica's Reply to Third Party Defendant in Interpleader Joseph Giraudo's Response to Helvetica's Motion to Strike and Motion for Rule 11 Sanctions AND Helvetica's Objection to Joseph Giraudo's Proposed Form of Judgment, Third Party Defendant in Interpleader Joseph Giraudo's Response to Helvetica's Objection to Giraudo's Proposed Form of Judgment; Plaintiff Helvetica's Reply to Defendant in Interpleader Joseph Giraudo's Response to Helvetica's Objection to Joseph Giraudo's Proposed Form of Judgment. The Court has further considered oral argument of

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<sup>1</sup> There was no "emergency." Neither human life nor safety were in peril.

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counsel for the parties.

Plaintiff's Objection to Defendant Giraudo's Proposed Form of Judgment is granted.

Although the proposed form of judgment is consistent with this Court's ruling of July 19, 2010, the parties have each raised issues, not specifically plead and/or ruled upon by the court, which suggest further litigation and piecemeal appeals to the Arizona Court of Appeals. First, Plaintiff objects to language in the proposed form of judgment on page 3, lines 20-22, because it fears that Giraudo will later argue that such language supports his contention that he still has a valid deed of trust, and may foreclose on this deed at his leisure. This Court ruled that the judicial foreclosure judgment (alone) did not extinguish Giraudo's lien. It never ruled, and was never asked to rule on whether Giraudo's failure to timely and properly comply with the redemption statutes extinguished his lien. Second, in its July 19, 2010 ruling, this Court did not address Plaintiff's argument that Helvetica's Deed of Trust precluded the debtors from granting subordinate liens without Helvetica's prior written consent. As noted by Plaintiff's counsel, the Court declined to consider this argument because it was raised in oral argument for the first time, and not briefed in the underlying pleadings.

Both of the issues set forth above should be resolved before entry of final judgment.

**IT IS ORDERED** sustaining Plaintiff Helvetica's Objection to Giraudo's Proposed Form of Judgment.

The Court has considered Third Party Defendant in Intervention Stephen and Pamela Pasquan's Notice of Lodging Form of Judgment; Plaintiff Helvetica's Objection to Third Party Defendants in Intervention Stephen and Pamela Pasquan's Proposed Form of Judgment; Third Party Defendants in Intervention Stephen and Pamela Pasquan's Response to Helvetica's Objection to the Pasquans' Proposed Form of Judgment; and Plaintiff Helvetica's Reply to Defendants in Intervention Stephen and Pamela Pasquan's Response to Helvetica's Objection to the Pasquans' Proposed Form of Judgment. The Court has also considered oral argument of counsel for the parties.

On its face, the proposed form of judgment adjudicates all issues of fact and law between the Pasquan Defendants and Defendant Ronald Gold. This Court's ruling of June 18, 2010, purported to do no more than that.

Helvetica objects to the form of the proposed judgment, arguing that the Pasquans are implicitly attempting to expand the Court's ruling – that their lien was not extinguished by the

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judicial foreclosure judgment (only) – to a much broader ruling: that the lien still exists even after the statutory redemption period expired. The Pasquans' counsel does not deny that this is their position.

This Court's June 18, 2010 ruling adjudicated nothing other than the respective rights between Ronald Gold and the Pasquans. In that context, the only issue presented was whether the judicial foreclosure judgment alone, extinguished their lien. It did not, and the Court's ruling stated no more than that.

On its face, the proposed form of judgment is consistent with this Court's ruling of June 18, 2010, and it adjudicates all rights between Gold and the Pasquans only. As such, there is no just reason for delay of the entry of judgment. However, in order to alleviate Plaintiff's concern, this Court has added the following footnote on page 3, lines 15-19 of the judgment:

“<sup>1</sup> This judgment adjudicates the rights between Ronald Gold and Defendants Stephen and Pamela Pasquan only. Nor has the Court determined whether the Pasquans' lien was extinguished once the statutory exemption period expired.”

The Court having signed the proposed judgment, with the interlineated footnote set forth above,

**IT IS ORDERED** directing the Clerk of Court to enter the signed judgment.

FILED: Judgment in Favor of Third Party Defendants in Intervention Stephen and Pamela Pasquan

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